D.B. CIVIL SPECIAL APPEAL NO.482/2005
(State of Rajasthan & Ors. Vs. M/s Vijay Laxmi Constructions)

DATE OF ORDER : 03.04.2006

HON'BLE MR. JUSTICE N.N.MATHUR
HON'BLE MR. JUSTICE MANAK MOHTA

Mr. Vishnu Kachhawaha, Additional Government Advocate.

We have heard learned counsel for the appellants and perused the impugned order dated 22.09.2005 passed by the learned Single Judge, dismissing the writ petition.

It is contended by the learned counsel that as per the terms of contract, in the event of dispute between the parties, the same is required to be referred to the arbitration to be appointed by the Engineer incharge. He has referred to Clause 23. It is submitted that the learned Designated Judge has exceeded the jurisdiction in appointing the arbitrator. This contention was rejected by the learned Single Judge on the admitted premise that Engineer incharge did not refer the matter to the standing committee within the period provided under Clause 23, which is one month from the date of receipt of the application. Therefore, when the party failed to appoint the arbitrator in terms of the agreement for appointing the arbitrator, the procedure as provided under the Act of 1996 would come into play for appointing the arbitrator.

Having considered the contentions raised by the learned counsel, in our opinion, the learned Single Judge has rightly rejected the contention, which is in conformity with the various decisions of the Hon'ble Apex Court and this Court. Recently, a Division Bench of this Court in Union of India & Ors. Vs. M/s Maheshwari Builders & Anr. (D.B.Civil Special Appeal No.173/2005) decided on 19th September, 2005, relying on a decision of the five Judges Bench of the Hon'ble Apex Court in Konkan Rly. Vs. Rani Constn. Pvt. Ltd., reported in AIR 2002 SC 778 has held that the Chief Judge or the designated Judge is not bound by the agreement clause for appointment of arbitrator, once such power has not been exercised by the department within a period of 30 days.

In view of the aforesaid, no interference is warranted with the order of the learned Single Judge. Accordingly, the Special Appeal stands dismissed.

(MANAK MOHTA),J. **(N.N.MATHUR),J.**

ms rathore